

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:01CR101
)	
v.)	
)	
ALONZO MARTINEZ-CAMACHO,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's notice of appeal (Filing No. 458), seeking to appeal the memorandum opinion (Filing No. 454) and order and judgment (Filing No. 455). The defendant advises the Court that he did not receive a copy of the order and judgment entered on October 19, 2004, and seeks leave to file this appeal out of time. Defendant also seeks to appeal *in forma pauperis*.

The record reflects that on May 2, 2005, the Court received a letter from the defendant requesting information regarding the status of his § 2255 motion. On May 3, 2005, the Court entered an order directing that a copy of the Court's memorandum opinion and order and judgment disposing of his § 2255 motion (Filing Nos. 454 and 455) be forwarded to defendant. His notice of appeal was filed on May 31, 2005.

Fed.R.App.P. 4(a)(5) provides in part that the district court may extend the time to file a notice of appeal if "(ii) regardless of whether its motion is filed before or during the

thirty days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause." The Court finds that good cause has been shown, and the notice of appeal will be deemed timely filed.

In his notice of appeal, defendant applies for a certificate of appealability. The Court has reviewed its memorandum opinion and order and judgment of October 19, 2004, and finds that plaintiff has failed to make substantial showing of the denial of a constitutional right as required by Title 28, United States Code, § 2253(c)(2). The Court further finds that the issues raised by the defendant in his § 2255 motion are frivolous and defendant will not be permitted to proceed on appeal *in forma pauperis*. For these reasons,

IT IS ORDERED that defendant's request to proceed *in forma pauperis* and his motion for certificate of appealability are denied.

DATED this 22nd day of June, 2005.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court